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PUBLIC ACT 93 PROVIDES SCHOOL SAFETY GRANT FUNDING

For the 2021-2022 fiscal year, Michigan school districts, intermediate school districts, and nonpublic schools will receive an additional \$15 million in grants to contract with a vendor to implement comprehensive safety and security assessments and \$12.5 million in grants for critical incident mapping. Public Act 93 of 2022 (“PA 93”), signed by Governor Gretchen Whitmer on June 10, 2022, amends the State School Aid Act to provide for these supplemental appropriations, in addition to separate funding for Oxford Community Schools.

Safety and Security Assessment Grants

The school safety grant program is available to public school districts, intermediate school districts, and nonpublic schools to contract with a vendor for comprehensive safety and security assessments. For the safety and security assessments, the grant will award no more than \$2,000 for each school building operated within a district. Schools must use the funding to contract with a vendor for the completion of the assessments. PA 93 provides a list of recommended criteria/qualifications for this vendor, including that the vendor –

- Has a well-developed and documented process for assessing safety and security in schools.
- Provides actionable recommendations that are documented and within best practice.
- Provides a description of the process, including costs.
- Has a history of assessing K to 12 schools and the ability to provide a list of references.
- Is able to provide examples of findings reports that include a comprehensive review of

“The school safety grant program is available to public school districts, intermediate school districts, and nonpublic schools to contract with a vendor for comprehensive safety and security assessments.”

- all elements of safety and security that include reviews of board policies, emergency operations plans, environment, exterior and interior, policy and procedures, and training and equipment.
- Is able to provide ongoing assistance, including, but not limited to, board presentations, community presentations, and consulting.
- Is able to provide basic qualifications for any assessors.
- If contracting with subcontractors, ensures that the subcontractors have experience in safety and security or law enforcement and ensures that the subcontractors have familiarity with school safety guidelines.
- Has experience in assessing safety and security in programs and facilities, including, but not limited to, athletic facilities and programs.
- Has experience in assessing safety and security in facilities and programs with specialized needs.
- Operates in the best interest of the district without any external vendor influence.
- Does not represent companies that sell safety and security products or accept or solicit certain referral fees.

Critical Incident Mapping Grants

Additionally, PA 93 provides for grant funding for “critical incidence mapping,” which will assist law enforcement in navigating a school in the event of an emergency. Schools may contract with a vendor for the implementation of critical incidence mapping, but it is not a requirement. Requirements for the maps include:

- Accurate floor plans
- Site-specific labeling, including:
 - Room labels;
 - Hallway names;
 - External door or stairwell numbers;
 - Locations of hazards;
 - Key utility locations;
 - Key boxes;
 - Automated external defibrillators; and
- Trauma kits;
- Ability to use the maps without purchasing additional software;
- The maps must be compatible with applications used by public safety officials;
- The maps must be provided in a printable format;
- The maps must be verified for accuracy; and
- The maps must be oriented true north.

The Michigan Department of Education (“MDE”) will oversee the grants and determine the form and process for applying. As of the date of this publication, MDE has not issued information on how to apply for the grants. Our office will monitor for updates.

If you or your school district have any questions regarding PA 93 or the use of other grant funds, please contact Collins & Blaha, P.C.

PUBLIC ACT 105 REQUIRES PERSONAL FINANCE COURSE FOR HIGH SCHOOL GRADUATION

Beginning with students entering eighth grade in the 2023-2024 school year, Michigan high school students will be required to complete a half-credit personal finance course to graduate. Public Act 105 of 2022, signed by Governor Gretchen Whitmer on June 16, 2022, amends the Revised School Code to provide for a new half-credit personal finance course requirement for high schoolers. The personal finance course will not change the overall number of credits required for graduation but, instead, will fulfill a half

credit of mathematics; visual, performing, or applied arts; or a language other than English. The Michigan Department of Education (“MDE”) is responsible for developing subject area standards and guidance for this new requirement, which are slated for release in August of 2022. High school students also remain subject to the requirement that they complete a half-credit economics course to be awarded a high school diploma.

“The personal finance course will not change the overall number of credits required for graduation but, instead, will fulfill a half credit of mathematics; visual, performing, or applied arts; or a language other than English.”

However, beginning with students entering eighth grade in the 2023-2024 school year, the economics requirement may no longer be fulfilled through completion of a “personal economics class.” Instead, PA 105 clarifies that the personal finance half credit is *in addition to* the required half credit of economics.

Each school district’s board of education or public-school academy’s board of directors may choose whether the half-credit personal finance class will count toward the credits required for mathematics, arts, or a language other than English. Additionally, the personal finance course requirement could be fulfilled by an MDE-approved “formal career and technical program or curriculum that aligns with the subject area content expectations developed by the [MDE].”

If your school district has any questions about these new graduation requirements or how they may affect your schools, please contact Collins & Blaha, P.C. for assistance.

PUBLIC ACT 88 REQUIRES INFORMATIONAL PACKETS HIGHLIGHTING POST-GRADUATION OPPORTUNITIES FOR STUDENTS IN GRADES 8 TO 12

Under a new bill, by August 1, 2023, and yearly thereafter, the Michigan Department of Education (“MDE”) will be required to develop or update, and make available to all schools, informational packets containing a collection of materials related to various career pathways for distribution to students in grades 8 to 12. Public Act 88 of 2022 (“PA 88”), signed by Governor Gretchen Whitmer on May 26, 2022, mandates that, each year, MDE must ensure the informational packet is made available to all school districts, intermediate school districts, public school academies, and nonpublic schools. Additionally, MDE must post the informational packet on its website homepage. Both actions must be completed

by August 1. The informational packets must include all of the following:

- Early/middle college programs, advanced placement programs, and college-level examination programs;
- Average tuition and fees associated for each public university and community college in Michigan;
- The 6-year success rate for each public university and community college in Michigan;

- Student loans;
- Postsecondary vocational training opportunities;
- In-demand occupations in Michigan;
- Public and private resources designed to aid students and parents in navigating postsecondary education;
- Public-service opportunities for high school graduates; and
- Postsecondary training and tuition assistance available for those who choose a career in public service.

By October 1 of each year (beginning in 2023), school districts are required to provide this informational

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packet in electronic or nonelectronic form to students enrolled in grades 8 through 12.

If your school district has any questions about these new informational packets on post-secondary education options, please contact our office.

SIXTH CIRCUIT EXTENDS LIABILITY UNDER TITLE IX FOR K-12 DISTRICTS

A recent decision from the Sixth Circuit clarified the circumstances under which a school district, including districts in Michigan, may be found liable under Title IX based on the district’s actions before or after an incident of student-on-student sexual harassment. In *Doe v Metropolitan Government of Nashville and Davidson County*, two female high school students, attending separate schools in the same district, were sexually assaulted at school and videotaped during the assault. 35 F 4th 459 (CA 6, 2022). The videos were circulated, and both female students were called a “slut” and “whore” at their respective schools. Both students filed internal complaints with the district. One of the female students left her school after filing the complaint. The other female student continued to be called names and was threatened after she filed a complaint with the school. In response, school administration

arranged for her to finish the school year at home. However, the name calling and threats continued during summer school. The students filed complaints under Title IX, alleging both “before” and “after” claims of sexual harassment.

There was evidence this was a systemic issue in the school district. Over five years of disciplinary records from the district provided documentation of “over 950 instances of sexual harassment, over 1200 instances of inappropriate sexual behavior, 45 instances of sexual assault, and 218 instances of inappropriate sexual contact. Many of those incidents involved students taking and/or distributing sexually explicit photographs or videos of themselves or other students.”

The incidents were addressed individually by school principals, who were not trained, instead of the district-wide Title IX Coordinator.

The Sixth Circuit determined that an educational institution may be liable for a student's "before" claim – when its deliberate indifference *before* the present victim was subject to sexual harassment, such as failing to address ongoing and systemic issues of sexual harassment (even involving different victims), leads to additional incidents of harassment against the present victim(s). Specifically, the Sixth Circuit held that a school district may be liable where:

- (1) it maintains a policy of deliberate indifference to reports of sexual harassment;
- (2) which creates a heightened risk of sexual harassment that was known or obvious;
- (3) in a context subject to the district's control; and
- (4) as a result, the plaintiff suffers sexual harassment.

The court rejected the "same victim" standard, under which an educational institution is only liable under Title IX when it has actual knowledge of sexual harassment, is deliberately indifferent in response to the harassment, and this deliberate indifference results in further sexual harassment *against the same victim*. The court determined that this standard should not apply to "before" claims of student-on-student harassment as this would "allow schools to remain deliberately indifferent to widespread discrimination as long as the same student was not harassed twice."

The court also considered the appropriate standard for determining whether a school district may be liable for a student's "after" claim based on the district's failure to act *after* the students at issue were harassed. The Sixth Circuit concluded that a K-12 school district is subject to a different standard than a postsecondary educational institution and,



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therefore, declined to apply the “same victim” standard discussed above to “after” claims involving student-on-student sexual harassment in the K-12 setting. The court reasoned that K-12 schools have “a degree of supervision and control” over their students that universities do not have over their students. Because of this difference in oversight and based on prior recognition that Title IX liability may vary based on the institutional setting, the court concluded that the same-victim test was not applicable to “after” claims in a high school setting.

If you or your school district have questions regarding Title IX compliance or student-on-student sexual harassment claims, please contact Collins & Blaha, P.C

COVID-19 UPDATE

Classroom COVID-19 safety measures such as masking requirements and vaccine mandates have spurred a series of lawsuits across the country. Recent court decisions and updated guidance should be considered as the 2022-2023 school year approaches.

Legal Challenge to MDHHS Mask Mandate Found Moot

The Sixth Circuit Court of Appeals concluded that a lawsuit seeking a legal order prohibiting Michigan’s mask mandate is moot. Mootness arises when there is no longer an actual controversy between the parties to a court case, and any ruling by the court would have no actual, practical impact. In *Resurrection School v Hertel*, 35 F 4th 524 (CA 6, 2022), a private religious school and two parents of students attending private religious schools challenged an order issued by the Michigan Department of Health and Human Services (“MDHHS”) that required individuals to wear face masks in various settings, including classrooms. The plaintiffs challenged the order under the First Amendment’s free exercise of religion clause. In deciding the case was moot, the Sixth Circuit noted that the order had been rescinded because of high vaccination rates, low case counts, new treatment options, and warmer weather. The court reasoned that it had been almost a year since a similar order requiring face masks had been issued. Therefore, the court did not address whether the MDHHS mask mandate violated the First Amendment. In addition, the court’s decision has no impact on the authority of a local school district or educational institution to impose a mask mandate on its staff, students, and/or visitors.

“As the 2021-2022 school year came to an end, court decisions and updated guidance may impact Michigan schools.”

Vaccination Mandate for Head Start Staff Upheld

The Sixth Circuit recently concluded that the U.S. Department of Health and Human Services (“HHS”)

had the authority to issue a rule requiring the vaccination of Head Start workers. See *Livingston Ed Serv Agency v Becerra*, 35 F 4th 489 (CA 6, 2022). In November 2021, HHS issued a vaccine mandate for Head Start program staff, contractors, and volunteers—or generally any staff who work with enrolled Head Start children and families in any capacity. The rule was issued without a period of notice and comment rulemaking, which is traditionally required when a federal agency such as HHS issues a rule. However, this vaccine mandate was considered to be an emergency regulation, allowing HHS to take immediate action and enforce a vaccine deadline of January 31, 2022.

After the vaccine mandate was issued, four Michigan school districts sued HHS and asked a court to declare the rule unlawful and prevent its enforcement. The court disagreed and held that HHS likely has statutory authority to issue such mandates because (1) the Secretary of HHS has broad statutory authority to provide for the health and well-being of children in the Head Start program and (2) HHS has a long history of regulating the health of Head Start children and staff. The Sixth Circuit also relied on a recent decision from the United States Supreme Court in which the Court held that HHS could issue a rule requiring vaccines for staff at Medicare and Medicaid facilities where there is good cause, such as an especially contagious variant of COVID-19 or an increased risk to children. *Biden v Missouri*, ___ US __; 142 S Ct 647 (2022).

Masks No Longer Required on School Buses, Public Transportation

As of April 18, 2022, the Centers for Disease Control and Prevention (the “CDC”) no longer requires individuals to wear face masks on public transportation. In January 2021 the CDC issued an order requiring individuals ages two and older to wear face masks on public transportation, including school buses. Following a legal challenge, a court concluded that the CDC did not have authority to issue the order and held that the CDC order could not

be enforced. See *Health Freedom Defense Fund v Biden*, __ F Supp 3d __ (MD Fl, 2022). Before the court’s decision, however, the CDC lifted restrictions on school transportation. The CDC continues to recommend wearing properly fitting masks in indoor areas of public transportation, including on buses.

If your school district has any questions regarding the information above or would like legal guidance related to COVID-19, please contact our office.

SIXTH CIRCUIT ADDRESSES PROBATIONARY TEACHER’S PROPERTY INTEREST CLAIMS UNDER THE FOURTEENTH AMENDMENT

The Sixth Circuit Court of Appeals held that a probationary teacher does not have a property interest in continued employment for purposes of a procedural due process claim under the Fourteenth Amendment. *Hasanaj v Detroit Public Schools Community District*, 35 F4th 437 (CA 6, 2022).

Hasanaj v Detroit Public Schools Community District

In this case, Hasanaj was employed by Detroit Public Schools (“DPS”) as a substitute teacher and a contract teacher for a total of ten years after obtaining his teaching certificate. However, while employed by DPS, Hasanaj was assigned to teach several courses for which he was not properly certified. Additionally, Hasanaj took an extended leave of absence for the majority of the 2013-2014 school year. During Hasanaj’s last three years of employment, he received ineffective ratings on

his year-end evaluations and was thereafter discharged as required by state law. See MCL 380.1249(2)(j). Hasanaj filed a claim of appeal with the Tenure Commission. “[T]he Tenure Commission concluded that Hasanaj did not achieve tenure because, after subtracting any leaves of absence between” when he obtained his certificate and his last day of teaching, “Hasanaj did not teach in his certified subject for a total of at least four years.”

“The Sixth Circuit Court of Appeals held that a probationary teacher does not have a property interest in continued employment for purposes of a procedural due process claim under the Fourteenth Amendment.”

Hasanaj subsequently filed a lawsuit in federal court, alleging a violation of his fourteenth amendment due process rights, wrongful

termination, and FMLA retaliation. With respect to the due process claims, Hasanaj asserted a deprivation of four interests:

- (1) [A] property interest in his continued employment as a public teacher;
- (2) a property interest in the government complying with the teacher evaluation statute in order to terminate him under that statute;
- (3) a property interest in using his Michigan teaching certificate;
- and (4) a liberty interest in obtaining employment as a teacher in Michigan.

Job Tenure

The Sixth Circuit held that Hasanaj did not have a protected property interest in his job because “he did not satisfy Michigan’s statutory tenure requirements.” Hasanaj did not allege that he satisfied Michigan’s statutory requirements to acquire tenure. Rather, he argued that he had a property interest in continued employment because he relied on the “policies and practices” of DPS. However, the Sixth Circuit explained that “[i]f a plaintiff is not entitled to tenure under a governing statute, he has no ‘legitimate claim’ to job tenure regardless of the institution’s policies and conduct.” Therefore, even if DPS treated Hasanaj as a tenured teacher, he did not actually acquire tenure under Michigan law and therefore did not have a property interest in his job. The Court held that because Hasanaj had not acquired tenure, “he was an at-will employee.” Although the Sixth Circuit opined that Hasanaj’s employment was at-will *for purposes of a procedural due process claim*, it is important to note that the Michigan Supreme Court has specifically ruled that discharge of a probationary teacher “is permissible only where it is neither unreasonable nor arbitrary.” *Rockwell v Bd of Ed of Sch Dist of Crestwood*, 393 Mich 616 (1975); citing *Caddell v Ecorse Bd of Ed*, 17 Mich App 632 (1969).

Compliance with State Teacher Evaluation Laws

The Sixth Circuit held that “Hasanaj also lacks a protected property interest in the ‘expectation’ that the District was required to follow the teacher evaluation statute.” The Court stated that “[s]tate law procedures that relate to property rights are not property rights.” Since Hasanaj lacked “a property interest in his job,” he had no “protected interest in governmental compliance with state-law procedures,” including procedures regarding teacher evaluations.

Teaching Certificate and Future Employment

Hasanaj alleged that by rating him ineffective on three consecutive evaluations and then terminating his employment, DPS “rendered his [teaching certificate] ‘valueless[.]’” The Court recognized that “individuals may claim a protected property interest in state-issued licenses that are revocable in limited circumstances or essential to pursuing an occupation or livelihood” and acknowledged that Hasanaj has a protected interest in his teaching certificate.

However, the Court noted that Hasanaj’s teaching certificate was not suspended or revoked and that he “‘remain[ed] entirely free to obtain employment’ with another Michigan school district.” Therefore, the Court ruled Hasanaj was not deprived of his property interest in his teaching certificate.

For similar reasons, the Sixth Circuit rejected Hasanaj’s claim to a liberty interest in obtaining employment as a teacher in Michigan. The court further noted that Hasanaj’s termination for inadequate performance did not amount to deprivation of a liberty interest, and at no point did Hasanaj

“request[] a name-clearing hearing,” which is required in order to protect such an interest.

Wrongful Termination

The Sixth Circuit noted that Michigan courts will imply a just-cause standard for termination “where ‘an employer’s policies and procedures instill a ‘legitimate expectation’ of job security in the employee.’” However, the Court stated that plaintiffs are required to demonstrate a protected

property interest in continued employment which, as discussed further above, Hasanaj cannot do.

FMLA

Finally, the Court dismissed Hasanaj’s FMLA retaliation claim because it was not timely filed.

If your school district has any questions about nonrenewal of probationary teachers, please contact Collins & Blaha, P.C. for assistance.



Since 1981, when Collins & Blaha, P.C. was founded, our attorneys have represented educational institutions in the ever-changing area of educational law. We currently represent some of the largest school districts in the state, and some of the smallest. Whatever the size, the issue, or the challenge, Collins & Blaha, P.C. will represent our clients’ interests competently and with the hands-on approach that a specialized firm can provide.

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